

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

MIRIAM KLAIMAN,)
)
) 2 CA-CV 2010-0078
) Plaintiff/Appellant,) DEPARTMENT A
)
) v.) MEMORANDUM DECISION
) Not for Publication
) Rule 28, Rules of Civil
) SANTA CRUZ COUNTY (ARIZONA),) Appellate Procedure
) a governmental entity; SANTA CRUZ)
) COUNTY (ARIZONA) BOARD OF)
) SUPERVISORS, a governmental entity;)
) and GEORGE SILVA, SANTA CRUZ)
) COUNTY (ARIZONA) ATTORNEY,)
) *ex officio*,)
)
) Defendants/Appellees.)
)

APPEAL FROM THE SUPERIOR COURT OF SANTA CRUZ COUNTY

Cause No. CV 08-630

Honorable Anna M. Montoya-Paez, Judge

AFFIRMED

Miriam H. Klaiman, Esq. Tucson
In Propria Persona

Jones, Skelton & Hochuli, P.L.C. Phoenix
By Georgia A. Staton and Eileen Dennis GilBride Attorneys for Defendants/Appellees

H O W A R D, Chief Judge.

¶1 In this appeal, appellant Miriam Klaiman argues the trial court erred by awarding attorney fees pursuant to A.R.S. § 12-349(A) to appellees Santa Cruz County, the Santa Cruz County Board of Supervisors, and Santa Cruz County Attorney George Silva (collectively, County). Because we conclude the court's award was supported by the record, we affirm.

Factual Background and Procedural History

¶2 The facts relevant to this appeal are not in dispute. While working as a Santa Cruz Deputy County Attorney, Klaiman filed a bar complaint against co-worker Leslie Spira, alleging Spira had been practicing law while on inactive status. She then informed the Illinois bar, where Spira was also licensed, about the pending Arizona complaint. In response, Spira filed a bar complaint against Klaiman, alleging Klaiman had engaged in professional misconduct by reporting false and inaccurate information about Spira in her bar complaint. In response to Klaiman's allegation that Spira's personal payment of her bar dues had been in violation of office policy, Spira attached a copy of Klaiman's own personal check for her bar dues, as well as her documentation requesting reimbursement. The state bar eventually dismissed both complaints.

¶3 Klaiman sued the County, and in her second amended complaint, asserted claims for false light invasion of privacy, public disclosure of private facts, negligent hiring, negligent supervision, and gross negligence. In support of these claims, she alleged that Spira had improperly attached Klaiman's personal information to her bar complaint, had obtained this information inappropriately from the County Attorney's

Office, and that the County had hired and supervised Spira improperly. The ensuing litigation was contentious and the parties filed numerous and extensive motions. In September 2009, the trial court denied Klaiman's motion for summary judgment and granted the County's cross-motion for summary judgment on all of Klaiman's claims. The County thereafter moved for an award of its attorney fees, which Klaiman opposed.

¶4 Following a hearing in January 2010, the trial court issued a detailed under-advisement ruling and awarded the County attorney fees in the amount of \$48,057.66 and nontaxable costs in the amount of \$2,214.35 pursuant to § 12-349(A). Following the subsequent entry of judgment, Klaiman brought this appeal. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(B).

Discussion

¶5 Klaiman contends the trial court erred in awarding attorney fees to the County pursuant to § 12-349(A), arguing its determination is not supported by the record or otherwise was incorrect.¹ This statute provides that a court “shall assess” an award of

¹Although Klaiman's briefs are not entirely clear, we conclude the scope of her appeal is limited to the attorney fee award and does not include the underlying grant of summary judgment. In her opening brief, she explains her appeal “was noticed upon the Entry of Judgment awarding attorneys' fees” and states she “wishes to appeal [the trial court's] findings” made in the court's under-advisement ruling awarding attorney fees. She then explains that, in order to appeal those findings, she must “demonstrat[e] that the case on the merits is not groundless,” and her first statement as to the applicable standard of review is: “When a trial court awards attorneys' fees pursuant to A.R.S. § 12-349, the appellate court reviews the award of attorneys' fees by reviewing the merits of the case.” She goes on to analyze the merits of her case in support of her argument that the fee award was erroneous. Accordingly, although she later makes statements that are facially inconsistent with this scope, viewed in context her appeal is limited to the attorney-fee issue. For example, although she eventually concludes that the grant of summary judgment for the County should be reversed and instead granted in her favor, she does so

reasonable attorney fees against a party who (1) “[b]rings or defends a claim without substantial justification,” (2) “[b]rings or defends a claim solely or primarily for delay or harassment,” (3) “[u]nreasonably expands or delays the proceeding,” or (4) “[e]ngages in abuse of discovery.” § 12-349(A). The court determined an award of attorney fees was warranted under all four grounds. Because a fee award under this statute is mandatory, we review whether sufficient evidence existed to support the award, considering the court’s findings of fact under a clearly erroneous standard and applying a de novo standard to its application of the statute. *Phoenix Newspapers, Inc. v. Dep’t of Corr.*, 188 Ariz. 237, 243, 244, 934 P.2d 801, 807, 808 (App. 1997).

¶6 An attorney fee award under § 12-349(A) requires proof by a preponderance of the evidence of one of the four grounds listed. *See* § 12-349(A); *Donlann v. Macgurn*, 203 Ariz. 380, ¶ 36, 55 P.3d 74, 80-81 (App. 2002).² We first address the trial court’s award under § 12-349(A)(3) because an award on this ground

under the subheading “Because the court below erred in adjudicating the case on the merits, this Court should reverse the award of costs and the award of attorneys’ fees.” Likewise, in her reply brief, the sole standard of review she provides concerns the award of attorney fees. Accordingly, we limit our review to that issue. *See* Ariz. R. Civ. App. P. 13(a)(6).

²Although Klaiman argues subsections (1), (2), and (3) must be viewed in the conjunctive, she misconstrues the statute, which states the court shall award attorney fees “if the attorney or party does any of the following.” § 12-349(A); *see also* *Donlann*, 203 Ariz. 380, ¶ 36, 55 P.3d at 80-81. The cases she cites likewise do not support her erroneous interpretation. *See State v. Richey*, 160 Ariz. 564, 564-65, 774 P.2d 1354, 1354-55 (1989) (citing fee award requirements in A.R.S. § 12-341.01(C)); *Fisher ex rel. Fisher v. Nat’l Gen. Ins. Co.*, 192 Ariz. 366, ¶ 13, 965 P.2d 100, 103-04 (App. 1998) (citing fee award requirements in §§ 12-341.01(C) and 12-349(F)); *Phoenix Newspapers, Inc.*, 188 Ariz. at 243, 934 P.2d at 807 (fee award apparently pursuant to § 12-349(A)(1), which requires proof of three criteria in § 12-349(F)).

does not require any review of the merits of the underlying litigation. *See Hamm v. Y&M Enters.*, 157 Ariz. 336, 338, 757 P.2d 612, 614 (App. 1988) (award under § 12-349(A)(3) “not linked to a decision on the merits” and instead based on review of “course of the proceedings and the conduct of the parties”). Under this provision, the court “shall assess reasonable attorney fees” if the party “[u]nreasonably expands or delays the proceeding.” § 12-349(A).

¶7 In support of its attorney-fee award under (A)(3), the trial court found Klaiman had pursued a number of irrelevant issues during discovery, which ultimately forced the County to file an “extensive” motion in limine addressing many of them. These issues included the criminal history of a co-worker’s relatives, a missing lady-bug pin, the location of Spira’s home, the same co-worker’s statement regarding Klaiman’s failure to wear high-heel shoes, conversations about her orthopedic problems, cans of pork sausage placed in her mail basket, past carpooling arrangements, certain books on tape played during carpooling, a conversation regarding Father Kino, alleged hazing of Klaiman because she was not Catholic, the disappearance of one of Spira’s cousins, and an unrelated bar complaint against opposing counsel representing the County. The court noted the County had filed the motion in limine only after Klaiman had refused to abandon these issues before trial.

¶8 The trial court also found Klaiman had included a number of irrelevant issues in the Rule 16 Scheduling Conference, including the County Attorney’s “actual motive” in employing Spira, whether the County was grossly negligent for failing to furnish public records requested by Klaiman in her notice of claim, and the validity of

legal transactions conducted by Spira during her employment. Finally, the court delineated seven different unsuccessful motions for sanctions Klaiman had filed and found these also “unreasonably expanded and delayed the proceedings.”

¶9 The trial court’s factual findings are amply supported by the record, including Klaiman’s numerous motions for sanctions, her disclosure of and discovery regarding issues unrelated to any claim or defense, and the County’s motion in limine concerning seventeen different irrelevant subjects Klaiman apparently intended to introduce at trial.³ We therefore cannot say the court clearly erred in concluding that an award of reasonable attorney fees was mandated under § 12-349(A)(3). *See Phoenix Newspapers, Inc.*, 188 Ariz. at 243, 244, 934 P.2d at 807, 808 (fee awards under § 12-349(A) reviewed to determine whether sufficient evidence existed to support award); *see also Solimeno v. Yonan*, 224 Ariz. 74, ¶ 32, 227 P.3d 481, 488-89 (App. 2010) (party’s failure to disclose information resulting in mistrial supported trial court’s award under § 12-349(A)(3)); *cf. Larkin v. State ex rel. Rottas*, 175 Ariz. 417, 426-27, 857 P.2d 1271, 1280-81 (App. 1992) (affirming fee award under § 12-349(A)(3) where party had continued to reargue issues already litigated and decided). Because we affirm

³Apart from summarily asserting that some of these topics concerned her “service conditions” and therefore were relevant because “they attest to a want of attention to proper employment policies and practices” that “made possible the invasion of employee privacy and dignity that is the nexus of this case,” Klaiman does not even attempt to articulate how these topics, let alone the non-employment-related matters (such as other employees’ relatives having criminal histories or unexplained absences) related to her claims or were otherwise a proper subject for discovery. As she asserted in her second amended complaint, the “events giving rise to [her] claims” were Spira’s bar complaint and its attachment, which she alleged “furnish[ed] ground for [her] causes of action.”

on this basis, we need not address the remaining grounds supporting the court's award.⁴
See § 12-349(A); *Donlann*, 203 Ariz. 380, ¶ 36, 55 P.3d at 80-81.

Disposition

¶10 For the foregoing reasons, the trial court's award of attorney fees to the County is affirmed.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

⁴Klaiman does not challenge the amount of the attorney-fee award.